

26th September 1955] [Sri C. Subramaniam]

to the municipal electoral rolls as and when they are intimated to them by the Electoral Registration Officers after receiving his directions, it might involve some delay, causing inconvenience to candidates and voters and he, therefore, suggested that a general authorization might be issued to municipal election officers to publish the amendments as soon as they were intimated. The Government accepted the suggestion and issued orders accordingly.

It has been represented to Government that unscrupulous additions to the municipal electoral rolls are sought to be made by interested candidates standing for the ensuing elections to municipal councils after filing their nominations, and that such a practice will not ensure fair elections. The Government have carefully examined the question in the light of the above representation. To prevent the abuses referred to above, they have since withdrawn with immediate effect the general authorization issued to Commissioners of Municipalities for publication of amendments on receipt from Electoral Registration Officers. The municipal election officers have also been directed not to publish under section 44 (2) of the Madras District Municipalities Act, 1920, any amendment to the electoral roll for any territorial constituency of the Madras Legislative Assembly that may be received from the Electoral Registration Officers, until the ensuing elections to municipal councils are over. I am sure that this will meet the situation which has been brought to the notice of the Government.

SRI M. KALYANASUNDARAM: On a point of clarification, Sir. Will these instructions take effect from the date of notification of this election or only for the registration which will take place in future after the issue of these instructions?

THE HON. SRI C. SUBRAMANIAM: If any action has already been taken for the publication of the amended electoral rolls, it cannot be set aside even by the Government. But I understand that no such publication has taken place.

DEPUTY SPEAKER: Next item on the agenda. We shall now take up the Code of Criminal Procedure (Madras Amendment) Bill, 1955.

V.—GOVERNMENT BILLS,

(1) THE CODE OF CRIMINAL PROCEDURE (MADRAS AMENDMENT)
BILL, 1955 (L.A. BILL NO. 27 OF 1955).

THE HON. SRI C. SUBRAMANIAM: Mr. Deputy Speaker, Sir, I move—

“That the Code of Criminal Procedure (Madras Amendment) Bill, 1955 (L.A. Bill No. 27 of 1955), as amended by the Joint Select Committee, be taken into consideration at once.”

[Sri C. Subramaniam] [26th September 1955]

Sir, day before yesterday I presented the Report of the Joint Select Committee in this House. What we are seeking to do by this Bill is to bring the practice relating to the trial of criminal offences in the City of Madras in line with that which prevails in the mufassal stations. Till now the trial within the City was held in respect of sessions cases by the original side of the High Court and a special procedure has been prescribed for the purpose. After consideration of the matter in consultation with the High Court, the Government have come to the conclusion that a Sessions Court may be established as in other districts for Madras City also, that criminal trials should take place before that Sessions Judge and that the procedure applicable under the Criminal Procedure Code for the trial of sessions cases in the mufassal centres should be made applicable to the trial of cases before the Sessions Judge in the City also. The Bill is designed to achieve this purpose. The only point for consideration here is whether in respect of those cases the trial should take place within the City limits with the assistance of a jury or not. We have got powers under the Criminal Procedure Code to order the trial of any class of cases with the assistance of a jury. After the experience we gained with reference to jury trial in the mufassal, we thought that it was not desirable to have the assistance of the jury in the trial of any class of cases in the mufassal. So, we have withdrawn the notification and all the sessions cases are being tried with the assistance of assessors now. Even that will go after the new amended Central Act comes into force. Now, with reference to the City, it has been represented that this jury system has worked fairly well. Therefore, it is the intention of the Government to give a fair trial to the jury system. Even when we change the mode of trial by transferring the cases from the High Court to the Sessions Court, it is our intention to have them tried with the assistance of the jury, and after having the experience of about a year, to review the situation here and then take a final decision with reference to the City also whether to continue the jury system or not. That is the only point which will have to be considered by this House. As far as that is concerned, the Joint Select Committee agreed with the view of the Government that it could be given a trial for about a year in the City and then the situation could be reviewed. Subject to this, I am sure that all the hon. Members will agree that all the other matters are only consequential with reference to the decision we have taken. In respect of the jury system, I have already explained the position of the Government. I am sure the House would agree that the existing provision in the Criminal Procedure Code is more than sufficient to meet the situation even with reference to jury trial within the City. I move the motion, Sir.

DEPUTY SPEAKER : Motion moved—

“That the Code of Criminal Procedure (Madras Amendment) Bill, 1955 (L.A. Bill No. 27 of 1955) as amended by the Joint Select Committee be taken into consideration at once.”

26th September 1955]

* SRI V. GOPALA GOUNDER : Mr. Deputy Speaker, I rise to welcome this Bill. The object of this Bill is to give some relief to the High Court and to do away with the difference in procedure relating to cases heard by Sessions Courts in the mufassal and cases tried by the High Court. The consequential amendments in this regard are brought forward in this Bill. The principal amendments contained in this Bill are these. One of them relates to trial of cases for defamation against officers of the State and other public functionaries. Originally, there were different forms of trial of such cases in respect of the City and the mufassal. The High Court was given power to try such cases. According to the present amending Bill, the trial by the High Court has been done away with, with reference to these offences. Some of these changes have been necessitated consequent on the passing of the Central Act XXVI of 1955 by the Parliament. The second amendment is with reference to the jury system. Of course, the Hon. Minister for Law, when he presided over the Select Committee meeting expressed the view that he was in favour of introducing the jury system in the mufassal, because, in his opinion, it will not be conducive to the best administration of justice in the mufassal. It is his view that the jury system may not be feasible in respect of cases triable by Sessions Courts in the mufassal. Whatever it is, by the Central Act, it has been made clear that the assessors system would be abolished and the Sessions Court Judges can try some cases of their own accord. The State Government had also power to notify cases which should be tried with the aid of jurors. If the jury system is completely done away with, it means that the Judges are to try the cases of their own accord. In the case of the trial by the High Court, some Members of the Select Committee expressed the view that the jury system should be continued for all trials held by the High Court irrespective of the nature of the cases that come before them. As the jury system in Madras City was working fairly well, it was urged that it should be retained. But, the State Government have been given power to specify the class of cases which should be tried by the High Court. But, later on, the Committee was of the opinion that all cases should be tried with the aid of jurors, and no decision was, however, taken then. It is a matter for us to discuss not. After the coming into force of the Central Act, the assessors system will be abolished. But till then, it will continue. From our experience, we know that that system was not helpful either to the Court or to the public. It is a welcome feature to have the trials with the aid of a jury. As I said, the State Government have power to notify cases which should be tried with the aid of jurors. Even now, they have got this power to notify cases, especially cases which involve property. I think we can retain that provision.

12-20
P.m.

Sir, there is another amendment which looms large in this Bill and that is with regard to the submission of list of witnesses by

[Sri V. Gopala Gounder] [26th September 1955]

the accused persons when they are committed to a Court of Sessions. Of course, we are agreeable to that. Also, there is another amendment which says that an appeal shall lie against acquittal to the Court of Sessions. Section 411-A says that appeals can lie only on a question of law. Now, it has been provided that appeals may lie even on a question of fact. This is a welcome provision. So far as the original jurisdiction of the High Court is concerned, section 526 of the Criminal Procedure Code empowers the High Court to call any case from any court or to withdraw or transfer any case, from one court to another. This is a welcome measure and may be passed without any division.

SRI P. K. GOPALAKRISHNAN : Mr. Deputy Speaker, it is a welcome measure that the Government have now decided to abolish the original side of the High Court with regard to the criminal jurisdiction. It is only during the last session, that we passed a Bill raising the jurisdiction of the City Civil Court to Rs. 50,000, thereby reducing the jurisdiction of the High Court in its civil side.

Sir, this difference in procedure with regard to mufassal and City came into force when the British were governing our country. At that time, this particular procedure which gives original jurisdiction to the High Court at Madras, Bombay and Calcutta was introduced by the British so as to give protection to the British vested interests who were concentrating in the City. They thought that if the cases, both civil and criminal, were tried by the Judges of the High Court, who invariably were Britishers, the British citizens in the City who were parties in such cases could get better deal from the High Court Judges, than they might get if such cases were tried by Indian judges. That is the historical background of this procedure, which had been introduced at that time to safeguard the interests of their citizens by Letters Patent appeals. Now that our country has become independent and there is no particular need for maintaining this procedure, it is a welcome feature that the Government have decided to abolish the original side of the High Court. It is good that the Sessions Court is established in the City also just as in the mufussal. Still, I would like to point out that there are a few discrepancies which have to be removed. For instance, under Section 411 of the Criminal Procedure Code, no appeal shall lie to the High Court unless the term of imprisonment exceeds six months, or if it is a case of fine, it does not exceed Rs. 200. At that time, such a provision might have been thought necessary as the High Court should not be worried with appeals from low sentences. But, now that a Sessions Court is to be established in the City, the Government can very well include a provision in the Code so as to allow appeals from Presidency Magistrates' Courts even against sentences which may not exceed six months' imprisonment or a fine of Rs. 200. If this is done, it will help the people here to get better justice. Because, if the sentence does not exceed six months' imprisonment or if the fine does not exceed Rs. 200, there will be no right of

26th September 1955] [Sri P. K. Gopalakrishnan]

appeal to the aggrieved person and there is a likelihood of justice not being done. Therefore it is only proper that this also is brought in line with the situation that is prevailing in the mufussal. This can be done only by accepting the amendment tabled by me to clause 38 of the Bill, namely, 'Provided not withstanding anything contained in this Code, any person convicted on a trial held by a Presidency Magistrate may appeal to the Sessions Judge in the City of Madras if the Magistrate has sentenced him to imprisonment for a term that does not exceed six months or to a fine that does not exceed two hundred rupees'.

12-30
p.m.

Again, Sir, in the amendment Act recently passed by the Central Legislature a new procedure is adopted for trying cases with regard to defamation of public servants while discharging their duties. A new Section, section 198 (b) is introduced in the Code of Criminal Procedure by that amendment Act XXVI of 1955 of the Government of India. This special procedure with regard to prosecution for defamation against public servants in respect of their conduct in the discharge of public function is quite unwarranted. There is no necessity to commit the case to a Sessions Court. The Sessions Court can take notice of a case of this sort without being committed by a trial court, that is, the magistrate's court. This is an undue advantage given to the public servants for which there is no necessity. The Hon. Minister was pleased to state that the jury trial is retained with regard to the City of Madras for one year only as an experimental measure. But in this particular procedure with regard to prosecution for defamation against public servants in clause 5 of the new section it is provided that the court of session shall try cases without the jury. Why should not Government accept the provision that in this matter also the jury trial will be there for one year as an experimental measure? This particular procedure with regard to prosecution for defamation of public servants in the discharge of their public functions is not at all proper. I hope Government would accept the amendments given notice of by me and enable justice to spread its arms more wide. With these words I resume my seat, Sir.

* SRI K. PARTHASARATHY: Mr. Deputy Speaker, Sir, I welcome the report of the Select Committee and the provisions as amended by the Select Committee. It was long felt that the system of trial of criminal cases in the City should also be entrusted to sessions judge rather than to the High Court. The provisions of this Bill provide for the trial of sessions cases in the City of Madras not by the High Court but by a sessions judge to be appointed hereafter. This is a welcome provision and I am sure it will be supported by all sections of the House. In the dissenting minutes, doubt has been raised whether the original criminal jurisdiction conferred on the High Courts by Letters Patent can be interfered with by this House and whether the provisions of this amending Bill will not be affected by the Letters Patent. I have no doubt that this House has got the power to legislate with respect to the trial of cases not by the High Court but by the Sessions Court to be constituted for the purpose. So far as the provisions relating to

[Sri K. Parthasarathy] [26th September 1955]

the trial of such cases by Sessions Court is concerned, I am sure they are all right and this House has got the necessary power, because under the Constitution this matter comes under the concurrent list. This Legislature can make provisions for all matters which are included in the Code of Criminal Procedure. But we find that the High Court is given power to try criminal cases in its original jurisdiction. Whether such jurisdiction has to be taken away by express provision has to be considered. I think to be on the safe side an additional clause is necessary specifying that notwithstanding anything contained in the Letters Patent relating to the High Court the trial of criminal cases in the Presidency town should be by Sessions Court to be established under the Code of Criminal Procedure. If such a provision is made I think there will be no occasion in the future to contend or dispute that the provisions of this Bill are not valid. I would therefore request the House to consider whether it would not be desirable to include such a provision in this Bill. Otherwise I support all the provisions of the Bill.

SRI S. PANCHAKSHARAM : Mr. Deputy Speaker, Sir, I am glad the Hon. Minister for Finance allows the continuance of the trial by jury only for one year. I was under the impression that the procedure was going to be uniform throughout the State. But for some reason or other, the Government seem to think that the trial by jury should continue in the City for at least one year more. I am however, glad he has restricted the time to one year. He seems to think that the jury in Madras is so infallible that its continuance must be considered necessary for some time more. I would like to submit that after the trial of some famous criminal cases, murder cases in the High Court Sessions, particularly starting with the Bagavathar's case, the impression that has gained ground is that the jury that is empanelled even in the City of Madras is not above board, is not so infallible as is sought to be made out. Three different judges in Bagavathar's case addressed the jury in three different ways and the jury empanelled in all the three trials came to three different verdicts. You can easily understand to what amount of mental agony the accused in that Lakshmi-kantam murder case would have been put to. The agony was prolonged for many years and the accused had to take his case all the way to England to set right a wrong which was committed by the jury in Madras. Therefore the shorter the time fixed for continuing trial by the jury even in the city, the better it would be for the State.

12.40
p m.

THE HON. SRI C. SUBRAMANIAM : Mr. Deputy Speaker, Sir, some hon. Members seemed to be worried about the Letters Patent and whether it would not stand in the way of the legislation that we are undertaking now. The Letters Patent issued under the authority of the Parliament has validity only to the extent we have recognized it in the Constitution. After the coming into existence of the Constitution, we are governed by the provisions of the Constitution and the provisions in the Letters Patent which have been recognized in the Constitution alone can have validity.

26th September 1955] [Sri C. Subramaniam]

With regard to the jurisdiction and the working of the High Court, we are governed by Article 225 of the Constitution which says—

“ Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.”

Therefore, the jurisdiction of the High Court, the procedure, the practice and everything that has been followed just before the commencement of this Constitution, have all been recognized but subject to the provisions of the Constitution and ‘ to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution’. So, any procedure that has been laid down or any jurisdiction that has been conferred upon the High Court under the Letters Patent is always subject to the Constitution and to the enactments which may be passed by the respective Legislatures. Thus, with respect to the jurisdiction of the High Court, our Legislature has got power and we are entitled to alter the jurisdiction of the High Court and vest another body with the jurisdiction to try criminal cases. Therefore, there is absolutely no question of the Letters Patent coming in the way of the legislative powers of this State. After all, these Letters Patent were issued under the authority of the King from England, and that has absolutely no validity now and that is why it would not stand in the way of our legislative enactments.

Then a reference was made to the Presidency Magistrate's Court and the hearing of appeals from the decision of the Presidency Magistrate's Court and a point has been raised, why not make the Sessions Judge the appellate authority in respect of the decision of the Presidency Magistrate's Court. Hon. Members are aware that the Presidency Magistrates' Courts are peculiar to the City alone and their constitution also is quite different from the judiciary we are having in the mufassal. The Chief Presidency Magistrate is always a very senior District Judge and now if we confer appellate powers upon the Sessions Judge, it might happen that the judgment of the Chief Presidency Magistrate will have to be scrutinized by the Sessions Judge junior to him. Such an anomaly is likely to arise and we are now considering the question of revising the entire Presidency Magistrate system whereby the Magistrate system in the City and the ordinary criminal judicial set-up in the mufassal will be brought on a par and a Presidency Magistrate need not be a District Judge. Therefore, we will have to wait for the scrutiny of the entire Presidency Magistrate system in the City and then if necessary make the necessary changes.

[Sri C. Subramaniam] [26th September 1955]

Then a reference was made to cases of defamation against officials and the procedure applicable to them. That has been done by the recent amendment of the Central enactment and we had no say in the matter. It is a Parliamentary enactment and, therefore, we will have to be guided by the procedure laid down there. But as far as the City Sessions Court is concerned, as has been pointed out by the hon. Member, Sri Panchaksharam, it is only as a trial that I have agreed to continue the jury system for another year and the position would be reviewed after that period and my own opinion is that whether it is in the City or in the mufassal, the same practice should prevail and, therefore, I hope, that this Motion will be carried.

SRI S. RAMALINGAM : ஸார், கனம் நிதி மந்திரி அவர்கள் சொன்னார், defamation சம்பந்தப்பட்ட அதாவது மான நஷ்ட நடவடிக்கை சம்பந்தமான பகுதி பார்லிமெண்டால் ஏற்படுத்தப்பட்டது அதைப் பற்றி நாம் ஒன்றும் சொல்வதற்கு இல்லை என்று. அந்தப் பகுதி நம் முடைய மாகாணத்திற்கு செல்லாது என்று சட்டம் செய்ய அதிகாரம் நமக்கு இருக்கும்போது ஏன் அதைச் செய்யக் கூடாது என்று கேட்க ஆசைப்படுகிறேன்.

THE HON. SRI C. SUBRAMANIAM : Yes, Sir, that is a matter which will have to be looked into separately but that is not relevant for the consideration of this Bill.

DEPUTY SPEAKER : The question is—

“ That the Code of Criminal Procedure (Madras Amendment) Bill, 1955 (L.A. Bill No. 27 of 1955) as amended by the Joint Select Committee be taken into consideration at once.”

The Motion was put and carried and the Bill was taken into consideration.

Clauses 2 to 5 were put and carried.

Clause 6.

SRI P. K. GOPALAKRISHNAN : Sir, I move the following amendment which stands in my name—

“ For the existing clause, substitute the following :

‘ 6. Amendment of section 198-B, Central Act V of 1898—Section 198-B of the Code be deleted.’ ”

SRI S. RAMALINGAM : Sir, I second it.

DEPUTY SPEAKER : Amendment moved—

“ For the existing clause, substitute the following :

‘ 6. Amendment of section 198-B, Central Act V of 1898—Section 198-B of the said Code be deleted.’ ”

26th September 1955]

SRI P. K. GOPALAKRISHNAN : Sir, I move the following amendment which stands in my name—

“ Add the following as sub-clause (1), and *number* the existing clause as sub-clause (2) :

‘ (1) For sub-section (5) *substitute* the following :

“ (5) When the case is committed to the Court of Session, notwithstanding anything contained in this Code, the Court of Session shall try the case with a jury and the procedure prescribed for jury trial shall be followed ”.’ ”

SRI S. RAMALINGAM : Sir, I second it.

DEPUTY SPEAKER : Amendment moved—

“ Add the following as sub-clause (1), and *number* the existing clause as sub-clause (2) :

‘ (1) For sub-section (5) *substitute* the following :

“ (5) When the case is committed to the Court of Session, notwithstanding anything contained in this Code, the Court of Session shall try the case with a jury and the procedure prescribed for jury trial shall be followed ”.’ ”

Now both clause 6 and the amendments are before the House for discussion.

SRI P. K. GOPALAKRISHNAN : Sir, first of all, I want that the entire Section 198-B introduced by the recent amending Act passed by the Parliament be deleted as far as it relates to our State. With reference to the point raised in my speech just now, the Hon. Minister has stated that it is a measure passed by the Parliament and we are not concerned with that. But at the same time, there are certain amendments proposed by the Hon. Minister to the same section. He has proposed an amendment to delete sub-section (12) of that section. I do not understand why this Legislature cannot take any action . . . (The Hon. Sri C. Subramaniam : Not ‘ cannot ’ but it can be done at the appropriate time.)

Now, I think, it is the appropriate time to amend the Code of Criminal Procedure. Therefore, we can very well accept the position now itself and the special procedure with regard to defamation cases against public servants may be removed and it may be made on a par with other cases. Why is this special procedure and why even the jury trial is refused? We are retaining the jury trial for one year with regard to other cases in the City of Madras as an experimental measure. Why not we accept that position, with regard to defamation cases also for one more year at least as an experimental measure.

Again, why should the Sessions’ Court take cognizance of these cases, all on a sudden without being committed by a trial Court. Section 198-B made as follows :—

“ Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code p.m

[Sri P. K. Gopalakrishnan] [26th September 1955]

(Act XLV of 1860) (other than the offence of defamation by spoken words) is alleged to have been committed against the President, or the Vice-President, or the Governor or Rajpramukh of a State or a Minister, or any other Public servant employed in connexion with the affairs of the Union or of a State, in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor."

DEPUTY SPEAKER: Order, order. I am not able to hear the speech of the hon. Member.

SRI P. K. GOPALAKRISHNAN: So, Sir, a special procedure has been provided, in the case of prosecution for defamation against public servants. With regard to other cases, the Sessions Court can take cognizance only after they are committed to it by a Trial Court. But here we are laying down a procedure enabling the Court of Session to take cognizance of a complaint made by the Public Prosecutor without the need for the accused being committed to it for trial. I wish to know why should there be a discrimination in the case of Government servants alone. Unless we are convinced that there is a necessity for adopting a special procedure with regard to defamation cases against Government servants, we cannot accept this procedure. We are not at all convinced about the need for introducing such a special procedure in the case of Government servants. That is why, I have suggested in my amendment that Section 198-B be deleted. In case this amendment is not acceptable, I wish that at least the jury trial may be allowed in such cases for one year just as in other cases. Sub-section (5) of section 198-B says:

"When the Court of Sessions takes cognizance of an offence under sub-section (1), then, notwithstanding anything contained in this Code, the Court of Session shall try the case without a jury and in trying the case, shall follow the procedure prescribed for the trial by Magistrate of warrant cases instituted otherwise than on a police report and the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution."

So, in respect of prosecution for defamation against public servants, the jury system of trial is being denied, whereas in all other cases tried by the Court of Sessions established in the City jury trial is allowed for one more year. Here again, Sir, a special procedure has been laid down in respect of prosecution against public servants. I want that this sub-section (5) in section 198-B should be deleted.

THE HON. SRI C. SUBRAMANIAM: Mr. Deputy Speaker Sir. I am really surprised at the obsession of the hon. Member with regard to the provisions made in Section 198-B. If only he had rightly understood the procedure outlined in that section, he would not have raised the objection against the procedure laid down there.

26th September 1955] [Sri C. Subramaniam]

The only point for consideration is this. With reference to defamation not by spoken words but with reference to defamation by written words, which should be the Court which should try it? With reference to these offences against public officials which judicial authority should be considered sufficient to go into the matter and then take a decision with regard to that? Ordinarily these defamation cases are tried by Magistrates. But, when high personages are involved like the President, or the Vice-President or Ministers of Government, the Parliament seems to have thought that it is better in such cases that a sufficiently higher judicial authority like the Sessions Judge should go into the matter rather than the Magistrate who may be overwhelmed by the importance of the persons concerned like the President or the Vice-President or the Ministers. That is why, in cases like that which are tried under one procedure by a Magistrate are made triable by a Sessions Judge. By this, protection is given to the person who is alleged to have committed the offence of defamation by giving jurisdiction to a higher judicial authority rather than judicial authority of a lower category. Therefore the point for consideration is this. The offence of defamation is ordinarily triable by a First-class Magistrate as a warrant case. Instead of making it triable by the First-class Magistrate, now the Sessions Judge is given powers to try that case not as a Sessions Case but as a warrant case as if it would have been tried by a Magistrate. If the Sessions Judge has to take cognizance for purposes of trial under the existing Criminal Procedure Code, there should be a committal order, and without that he cannot take cognizance. Besides, under the committal procedure by a Magistrate, the accused are put to unnecessary expenditure. What has been done now is that in the place of the First-class Magistrate trying the offence the Sessions Court shall try it following the same procedure adopted in the Magistrate's Court. Therefore, no special provision has been made against offences committed by public servants. On the other hand sufficient protection is sought to be given to the ordinary citizens who may be accused of offences against high personages. That is why, the Sessions Judge comes into the picture. I do not know why the hon. Member or his Party or anybody should take interest in people who commit offences of defamation against high personages.

Section 198-B includes, as far as the present Bill is concerned, the Original Side of the High Court which we are abolishing and that is why sub-section 12 of section 198-B is being deleted. The Parliament which is also a representative body in which also the Party represented by the hon. Member is represented, has passed the amending legislation after full consideration of the matter. I am sorry I am unable to understand the objections raised by the hon. Member.

SRI T. C. NARAYANAN NAMBIAR : With regard to trial of defamation cases in the Court of Sessions, hitherto the procedure followed was that the persons defamed had to file the complaint.

[Sri T. C. Narayanan Nambiar] [26th September 1955]

Here, the Public Prosecutor has been empowered to lay the complaint. May I know from the hon. Minister why this change in procedure has been made?

THE HON. SRI C. SUBRAMANIAM: When persons like the President or the Vice-President or Ministers of Government are concerned in defamation proceedings, their defamation affects the public administration also. It may be that a Minister does not like to submit himself to be cross-examined in such defamation cases and undergo all sorts of difficulties. But the Government may come to the conclusion that though the individual Minister concerned may not like to go to the Court and vindicate himself, a judicial forum should go through the matter and find out the truth so far as the allegations made against the Minister are concerned. Therefore, apart from the wishes of the individual concerned, the Government have been given the power to go to a Court so that if the allegation is true the Minister concerned will have to resign and get out of office and if the allegation is not true and if a false allegation has been made against him, certainly the offender will have to be punished. Therefore, from both points of view, it should not be left to the individuals concerned whether they should go to a Court or not. That is why the Public Prosecutor has been brought into the picture.

SRI P. K. GOPALAKRISHNAN: Sir, there is no question of any person defamed not going to Court because there is a provision that "the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded otherwise directs be examined as a witness for the prosecution."

THE HON. SRI C. SUBRAMANIAM: Suppose he does not file a complaint at all and in that case he need not go to the Court.

SRI P. K. GOPALAKRISHNAN: Again, Sir, these provisions are not limited to the President, Vice-President or the Ministers of the Government. These provisions can be made use of even by petty public officials. The provision says " . . . any other public servant employed in connexion with the affairs of the Union or of a State" We have the experience of these public servants committing ever so many atrocities, if I may be allowed to use that word. But we have the experience that by creating public opinion, by creating public feeling that such and such officials are doing a mischief, erring officials can be prevented from indulging in such activities. It is always good that public pressure is created through public opinion. But now anybody who makes such a reference is now put under duress and he may be dragged on to a Court by a Public Prosecutor on a defamation charge. This clause is not at all a welcome provision and we want it to be removed.

THE HON. SRI C. SUBRAMANIAM: I hope the other members appreciate the need for this section. Every sort of defamation is not brought in. Only defamation against a public servant in

26th September 1955] [Sri C. Subramaniam]

respect of his conduct in the discharge of his public functions is brought in. In this we are concerned not with the person but with public administration. Therefore it should not be left to the choice of the person to go to a Court of law or not. It is made compulsory that the person should be a witness. Once he goes into the witness-box, he will be cross-examined by the defence lawyer. Various charges may go before a judicial tribunal. This is a salutary provision.

The hon. Member referred to public opinion. Public opinion should not intimidate Government officials to take wrong decisions or act in a wrong way. If anybody makes a written statement that an official has misbehaved and the latter denies misbehaviour, it is for the complainant to prove that he has misbehaved. If misbehaviour is proved, certainly the official will be condemned on the finding of the Judges. Not for the purpose of punishing alone, but in the interests of good and fair administration this provision is absolutely necessary. I think a very salutary principle is involved in this section. I am sure that on further consideration the Hon. Member will withdraw his amendments.

SRI P. K. GOPALAKRISHNAN: Though I do not accept the arguments advanced, I beg leave of the House to withdraw my amendments.

The two amendments moved by Sri P. K. Gopalakrishnan were by leave withdrawn.

Clause 6 was put and carried.

Clauses 7 to 37 were put and carried.

Clause 38.

SRI P. K. GOPALAKRISHNAN: As the Government have assured that they will reconsider the entire position with regard to the Presidency Magistrate's Court and bring forward a comprehensive Bill, I do not move the amendment of which I have given notice.

SRI T. C. NARAYANAN NAMBIAR: Sir, I move—

“ Add the following as item (iii) to clause 38 :—

‘ (iii) add the following proviso to section 411-A—

“ Provided nothing in this Act shall prevent an accused from filing an appeal on a conviction by a Presidency Magistrate to the Court of Sessions for the Presidency Town of Madras, where the sentence is less than six months' imprisonment or a fine less than Rs. 200, if the accused so desires ” ” ”

The amendment was duly seconded.

DEPUTY SPEAKER: Clause 38 and the amendment are before the House for discussion.

[26th September 1955]

SRI T. C. NARAYANAN NAMBIAR: In replying to Sri P. K. Gopalakrishnan, the Hon. Minister said that the Chief Presidency Magistrate would be senior to the Sessions Judge and that it would not be proper to provide for a junior man revising the judgment of the senior man. The object of this amendment is to do away with the difference in procedure between the mufassal and the Presidency Town of Madras. I do not want to deal with how this difference arose. It will be beyond the means of a poor accused to go to the High Court. The amendment does not make it obligatory that he should go to the Sessions Court. In case he desires to go to the Sessions Court, he is not precluded from exercising that right.

THE HON. SRI C. SUBRAMANIAM: I am sorry that the desire of a particular person is brought into the picture. Either we vest a court with appellate powers or we do not. We do not give appellate powers at the discretion of the accused or the complainant concerned. That the desire of the person concerned should decide whether an appeal should go to the High Court or to the Sessions Court militates against all canons of criminal jurisprudence. Apart from this, the objection which I placed before the House will hold good here also. Certainly we do not allow a junior Judge to sit in Judgment over a judgment passed by a senior Judge. Whether it is at the instance of the accused or the complainant or the State, such a state of thing cannot be allowed. I am sorry I am unable to accept the amendment.

SRI T. C. NARAYANAN NAMBIAR: May I know whether it is always the rule that a senior Judge shall be the Presidency Magistrate?

THE HON. SRI C. SUBRAMANIAM: Generally a very senior person is appointed as the Presidency Magistrate. That has been the convention. Now we are considering a revision of the whole thing and the Court of the Chief Presidency Magistrate will be brought in line with the mufassal Courts.

SRI T. C. NARAYANAN NAMBIAR: As the Deputy Speaker, the Minister and the other members have understood my stand in this matter and in view of the answer given by the Hon. Minister, I beg leave of the House to withdraw my amendment.

The amendment was by leave withdrawn.

Clause 38 was put and carried.

DEPUTY SPEAKER: Clauses 39 to 49 are now before the House for discussion.

SRI N. K. PALANISAMY: கனம் உதவி சபாநாயகர் அவர்களே, நான் 46-வது வார்த்தைக்கு ஒரு திருத்தம் கொடுத்திருந்தேன். நீங்கள் அதை நான் பிரேரிக்கக் கூடாது என்று உத்திரவு போட்டு விட்டீர்கள்.

26th September 1955]

DEPUTY SPEAKER: If the hon. Member wants, let him oppose the clause. He cannot refer to the disallowed amendment.

SRI N. K. PALANISAMY: அதாவது க்ருமினல் ப்ரொஸிஜர் கோட் 407-வது ஷரத்து பிரகாரம் மாஜிஸ்ட்ரேட் கொடுத்த தீர்ப்பின் பேரில் செஷன்ஸ் ஜெட்ஜுக்கு அப்பீல் செய்து கொள்வதற்கு வசதி கிடையாது. அதற்காகத்தான் நான் திருத்தம் கொடுத்திருந்தேன். அந்த மாதிரியாக அப்பீல் செய்து கொள்ள வசதி அளிக்கக் கூடிய வயையில் இதனை சர்க்கார் திருத்துவார்களா என்று கேட்கிறேன்.

THE HON. SRI C. SUBRAMANIAM: விடய விடய ராமாயணம் கேட்டு காலையில் சிதைக்கும், ராமனுக்கும் என்ன உறவு என்று கேட்கிற கதையைப் போல் இருக்கிறது. கனம் அங்கத்தினருடைய கேள்வி. அதைப்பற்றித்தான் நான் இவ்வளவு நேரமும் சொல்லிக் கொண்டிருந்தேன். நான் முன்பு சொல்லிக் கொண்டிருந்தவையையே இந்தக் கேள்விக்கும் பதில்.

SRI S. RAMALINGAM: விடய விடய ராமாயணத்தை ஆங்கிலத்தில் சொல்லிக்கொண்டிருந்ததினால்தான் இந்தக் கேள்வி கேட்க வேண்டிய நிலைமை ஏற்பட்டது. தமிழில் சொல்லியிருந்தால் இந்த நிலைமை ஏற்பட்டிருக்காது.

THE HON. SRI C. SUBRAMANIAM: அவருக்கு ஆங்கிலம் தெரியும்.

DEPUTY SPEAKER: The hon. Member Sri Palanisami knows English. I shall now put clauses 39 to 49 to the vote of the House.

Clauses 39 to 49 were put and carried.

Clause 1 and the Preamble were put and carried.

THE HON. SRI C. SUBRAMANIAM: Sir, I move—

“That the Code of Criminal Procedure (Madras Amendment) Bill, 1955, be passed.”

SRI P. K. GOPALAKRISHNAN: Sir, with reference to the promise made by the Hon. Minister on the floor of the House just now that the Government will reconsider the position with regard to the procedure followed by the Presidency Magistrates' Courts in the City, and that a comprehensive Bill will be brought in, I hope that the Bill will be brought before this Legislature without delay.

THE HON. SRI C. SUBRAMANIAM: It is not a question of reconsidering the position. The matter is under the consideration of the Government now.

DEPUTY SPEAKER: The question is—

“That the Code of Criminal Procedure (Madras Amendment) Bill, 1955, be passed.”

The motion was carried and the Bill was passed.